IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.
CRIMINAL APPLICATION No.2341 of 2007

Jivaba Dattatraya Kamble ..Applicant.

Vs.

The State of Maharashtra ..Respondent.

ALONGWITH

CRIMINAL APPLICATION No. 2342 of 2007

Raygouda H. Patil. ..Applicant.

Vs.

State of Maharashtra. ..Respondent.

Mr A. P. Mundargi with A.S. Khandeparkar i/b
Khandeparkar & Associates for the applicant.

Ms S. D. Shinde, APP for the State.

CORAM: V.C. DAGA,J.

DATED: 25TH JULY, 2007.

P.C.:-

1. Heard learned counsel for the applicant in both the applications;wherein, the applicant is seeking pre-arrest bail. The learned Additional Sessions Judge,Sindhudurg vide order dated 2.7.2007 passed below Exh.1 in Criminal Application No. 72 of 2007 has basically rejected the application for anticipatory bail for non appearance of the applicant on the date of hearing.

2. Having heard the parties, it is not in dispute that the interim anticipatory bail application came to be refused on 16.6.2007.

Thereafter, on 26.6.2007 itself the District Government Pleader moved application seeking direction directing the applicant to remain present in the Court on the date of hearing.

3. While considering the application for bail, the learned Sessions Judge observed that the applicant was supposed to remain present on 26.6.2007. Since he was absent, the applicant was directed to remain present on 28.6.2007 without affording any protection from arrest. The matter was adjourned to 2.7.2007. On 2.7.2007 the applicant again remained absent for want of interim protection. The learned Sessions Judge considering absence of the applicant rejected the application for pre-arrest bail vide order dated 2.7.2007.

4. In the above background, the applicant has invoked jurisdiction of this Court under Section 438 of the Cr.P.C. to seek pre-arrest bail.

5. The learned Senior counsel appearing for the applicant submits that in the absence of protection, it was not possible for the applicant to remain present in the court. He took me through the provision of Section 438 of the Cr.P.C. and the scheme engrafted therein and urged that appropriate course would be to protect

the applicant for a limited purpose so as to enable him to appear before the Sessions Court. Reliance is placed on the unreported orders of this Court in Criminal Application Nos. 4370 of 2004, Babu Gavappa Jalagiri vs. The State of Maharashtra, (decided on 20th October, 2004) and Criminal Application No. 7473 of 2005, Vikram Janakraj Ahuja vs. State of Maharashtra and Ors.

(decided on 18th November, 2005.)

6. Having heard parties, justice would be done by setting aside impugned order and restoring an application filed under Section 438 of the Cr.P.c. moved by the applicant to the file of the Sessions Court with direction to decide the same afresh on its own merits. The applicant shall remain present in the Court at the time of hearing of the application. By way of limited protection, the respondent is directed not to arrest the applicant in the court premises.

7. The Sessions Court is directed to hear and decide this application on 9.8.2007. It is needless to mention that if the case is adjourned for want of time to the Court or at the request of the Government Pleader, then the Trial Court shall extend the interim protection given to the applicant till next date of hearing. Needless to mention that limited protection shall

automatically lapse with the decision of the application by the Sessions Court.

8. Both the applications are disposed of accordingly.

9. The parties to act on an authenticated copy of this order.

(V.C. DAGA,J.)